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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,437	11/20/2003	Tomaso Vercellotti	2247-114	6624
6449 7590 11/29/2007 ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005			EXAMINER PATEL, NIHIR B	
			ART UNIT 3772	PAPER NUMBER
			NOTIFICATION DATE 11/29/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/716,437	VERCELLOTTI ET AL.	
	Examiner	Art Unit	
	Nihir Patel	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09.06.2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9, 18-21, 23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9, 18-21, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>09.06.2007</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. The indicated allowability of claims **9, 18 and 24** is withdrawn in view of the newly discovered reference(s). Rejections based on the newly cited reference(s) follow.

### ***Specification***

2. The disclosure is objected to because of the following informalities: The applicant is required to update 1<sup>st</sup> paragraph of the specification (cross-reference to related applications).

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 20 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The terms T2 tip and OST1 tip do not define structure, Therefore, it is unclear what the applicant is actually claiming.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims **9, 19, 21, 22 and 24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nowak (US 5,997,298) in view of Loschilov et al. (US 4,188,952) and further in view of Gault (US 6,149,434).

8. As to claims **9, 19, 21, 22 and 24**, Nowak substantially teaches a method step of creating a horizontal crestal incision on an edentulous ridge by means of a first chisel tip (**see figure 1 and column 2 lines 25-35; the tip has a crestal shape inherently indicating that a crestal incision will be made**), widening the incision, by means of a second chisel tip (**see figure 1 and column 2 lines 25-35**), creation of at least one implant site on the bottom of the widened horizontal crestal incision, by means of an osteotome tip and positioning of implant in the implant sites respectively (**see figure 1 and column 2 lines 25-35**), but does not disclose the first chisel tip, second chisel tip and the osteotome tip being operated by ultrasound or measuring of the edentulous ridge, prior/after positioning the implants in the implant sites, using a periodontal probe. Loschilov teaches an apparatus that does provide a first chisel tip, second chisel tip and the osteotome tip being operated by ultrasound (**see abstract**) and Gault teaches a method step of measuring of the edentulous ridge, prior/after positioning the implants in the implant sites, using a periodontal probe (**see column 7 lines 45-55**). Therefore, it would have been obvious to one

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having ordinary skill in the art at the time the invention was made to modify Nowak's invention by providing a first chisel tip, second chisel tip and the osteotome tip being operated by ultrasound in order to obtain an extremely precise and fine incision as taught by Loschilov and measuring of the edentulous ridge, prior/after positioning the implants in the implant sites, using a periodontal probe in order to provide a perfect fit as taught by Gault.

9. Claims **20 and 23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nowak (US 5,997,298).

10. As to claims **20 and 23**, Nowak substantially discloses the claimed invention, see rejection of claim 9 above, but does not disclose the first chisel tip being T2 tip and the osteotome tip being a OST1 tip. It would have been an obvious matter of design choice to modify Nowak's invention by make the first chisel tip a T2 tip and the osteotome tip a OST1 tip in order to obtain an extremely precise and fine incision, since applicant has not disclosed that having the first chisel tip being T2 tip and the osteotome tip being a OST1 tip solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the first chisel tip being a T1 or a T3 and the osteotome tip being OST2, OST3, OST4 or OST5.

11. Claim **18** is rejected under 35 U.S.C. 103(a) as being unpatentable over Nowak (US 5,997,298) in view of Loschilov et al. (US 4,188,952) and further in view of Linkow (US 4,702,697). Nowak substantially teaches a method step of creating a horizontal crestal incision on an edentulous ridge by means of a first chisel tip (**see figure 1 and column 2 lines 25-35; the tip has a crestal shape inherently indicating that a crestal incision will be made**), widening the incision, by means of a second chisel tip (**see figure 1 and column 2 lines 25-35**), creation of

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at least one implant site on the bottom of the widened horizontal crestal incision, by means of an osteotome tip and positioning of implant in the implant sites respectively (**see figure 1 and column 2 lines 25-35**), but does not disclose the first chisel tip, second chisel tip and the osteotome tip being operated by ultrasound or wherein the horizontal incision includes a mesial releasing incision and a distal releasing incision. Loschilov teaches an apparatus that does provide a first chisel tip, second chisel tip and the osteotome tip being operated by ultrasound (**see abstract**) and Linkow teaches a method step of providing a horizontal incision includes a mesial releasing incision and a distal releasing incision (**see claim 6**). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Nowak's invention by providing a first chisel tip, second chisel tip and the osteotome tip being operated by ultrasound in order to obtain an extremely precise and fine incision as taught by Loschilov and providing a horizontal incision includes a mesial releasing incision and a distal releasing incision in order to provide a perfect fit as taught by Linkow.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

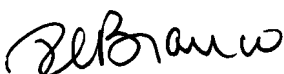
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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11/26/07